

REMARKS

This Application has been reviewed in light of the Office Action dated November 20, 2007 ("*Office Action*"). Claims 1-47 are pending in the Application, and the Examiner rejects all pending claims. Applicants amend Claims 1-3 and submit that no new matter is added by these amendments. Applicants respectfully request reconsideration and allowance of all pending claims in view of the following remarks.

I. Section 102 Rejections

A. Claim 1

The Examiner rejects Claim 1 under 35 U.S.C. § 102(a/b) as being anticipated by U.S. Patent Application Publication No. 2004/0229671 issued to Stronach et al. ("*Stronach*"). Applicants respectfully request reconsideration of Claim 1 for the reasons discussed below.

Independent Claim 1 of the present Application, as amended, recites:

A computer-implemented method performed using a computer system for conducting an exchange of an activity entry between a buyer and a seller, the computer system comprising one or more processing units and one or more memory units, the method comprising:

determining a first set of entries in an activity, at least one entry to be determined a winning entry based on an occurrence of an event associated with the activity;

using the computer system, executing a first initial distribution of the first set of entries to at least one buyer; and

using the computer system, conducting trading, of at least one of the entries included in the first distribution, between the at least one buyer and at least one seller.

Applicants respectfully submit that *Stronach* does not disclose, teach, or suggest each and every feature of Applicants' Claim 1.¹

¹ "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); MPEP § 2131 (*emphasis added*).

For example, *Stronach* does not disclose, teach, or suggest “using the computer system, executing a first initial distribution of the first set of entries to at least one buyer” **and** using the computer system, conducting trading, of at least one of the entries included in the first distribution, between the at least one buyer and at least one seller,” as recited in amended Claim 1. The *Office Action* identifies paragraphs 51-59, 75, and 77-78 of *Stronach* as disclosing the recited limitations. However, the cited portions merely describe that a wagering network such as a “booth, stand, kiosk, counter, tent, building or the like may be used to communicate with a wagering account holder.” (*Stronach*, paragraph 52). The wagering network system allows the wagering account holder (i.e., user) to set up an account. (*Stronach*, paragraphs 52-57). Specifically, *Stronach* discloses:

The wagering terminal may comprise, by way of non-limiting examples, a display to present information regarding selected race events; a user interface enabling a user to place a wager on an elected race event of selected race events displayed; a card reader to receive a card having information pertaining to a user account and to enable identification of available wager amounts

(*Stronach*, paragraph 58). Thus, the wagering terminal allows a user to set up an account for subsequent wagering.

For the actual placing of bets, *Stronach* discloses “a race providing system that facilitates wagering on race events and provides information regarding race events.” (*Stronach*, paragraphs 58 and 59). Specifically, *Stronach* discloses:

The terminal includes a race event selector to select next race events for wagering, the race event selector using an algorithm to select next race events by analyzing one or more factors from the group comprising estimated start of race event; estimated duration of race event; nature of the race event; actual start of the race event as affected by delays; spacing among other race events; and other attributes affecting the playability of particular races; a display to present information regarding the selected race events; a user interface by which a user may place a wager on an elected race event of the selected race events displayed; and a wagering value mechanism, such as a wagering value selector to provide a wager amount for the wager on the elected race event.

(*Stronach*, paragraph 59). Thus, *Stronach* merely discloses that the race event selector helps a user to select a race to wager on.

Paragraphs 75, 77, and 78 also do not disclose, teach, or suggest the recited limitations. Like the portions of *Stronach* quoted and cited above, paragraph 75 merely discloses that the race providing system 110 includes a wagering terminal transceiver 210 for “send[ing] all or some of the racing information to the at least one wagering terminal and, where applicable, to send any other information to the at least one wagering terminal.” (*Stronach*, paragraph 75). Such information “may include one or more sets of quick pick race contestant(s) and one or more least chosen race contestants for a wager type . . .” (*Stronach*, paragraph 75). As used in *Stronach*, “race contestants” refers to possible race participants and/or races that the user may wager on,² and the algorithms for selecting possible race contestants to a user are described in paragraphs 75-79.

Thus, *Stronach* merely discloses setting up an account for a user and helping the user to select a race to wager on. *Stronach* does not disclose, teach, or suggest both steps of “using the computer system, executing a first initial distribution of the first set of entries to at least one buyer” **and** “using the computer system, conducting trading, of at least one of the entries included in the first distribution, between the at least one buyer and at least one seller,” as recited in amended Claim 1. At most, *Stronach* discloses the placing of a bet. To the extent that this is analogous to “a first initial distribution” (which Applicants do not admit), there is no disclosure in *Stronach* of then “conducting trading of at least one of the entries included in the first distribution, between the one buyer and at least one seller,” as recited in Claim 1.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 1.

² *Stronach* discloses:

For example, in an exacta, the player may select one of the two runners/horses (in either position) and by pressing quick pick, the system will automatically select the completing runners for that wager type. Similarly with a trifecta, the player selection may be for 0, 1, or 2 horses, and the quick pick selection would complete the selection of 1, 2, or 3 runners, respectively.

(*Stronach*, paragraph 78).

B. Claim 2

The Examiner rejects Claim 2 under 35 U.S.C. § 102(a/b) as being anticipated by *Stronach*. Applicants respectfully request reconsideration of Claim 2 for the reasons discussed below.

Claim 2 has been rewritten in independent form to include the limitations recited in Claim 1 prior to any amendment in this Response to Office Action. Applicants respectfully submit that *Stronach* does not disclose, teach, or suggest the each and every element recited in Applicants' Claim 2, as previously presented. For example, Applicants respectfully submit that *Stronach* does not disclose, teach, or suggest at least the following claim elements recited in Claim 2:

- receiving, from a second user, at least one sell request associated with the at least one entry of the first set of entries;
- matching the at least one buy request with the at least one sell request; and
- transferring the at least one entry of the first set of entries from the second user to the first user.

Rather, and as discussed above in Claim 1, *Stronach* merely discloses a wagering network system that allows a wagering account holder to set up an account and then place bets through a race providing system. (*Stronach*, paragraphs 52).

The *Office Action* identifies paragraphs 60 as disclosing "receiving, from a second user, at least one sell request associated with the at least one entry of the first set of entries." (*Office Action*, page 3). The cited portion of *Stronach*, however, merely discloses an embodiment in which "a wagering terminal [is] in communication with a race providing system that facilitates wagering on race events and provides information regarding the race events." (*Stronach*, paragraph 60). "The terminal may comprise a display to present information regarding selected race events . . . , a user interface enabling placement of a wager on an elected race event of the selected race events displayed; and a wagering value selector to provide a wager amount for the wager on the elected race event." (*Stronach*, paragraph 60). For making wagers, information "may be generated from matching

handicapping data showing estimated probability of race contestants finishing in specific positions against current odds to find wagering opportunities.” (*Stronach*, paragraph 60).

Thus, the cited portion of *Stronach* again only discloses that information is generated about the race participants and their odds of winning to help the user make a wager on a race. There is no disclosure in *Stronach* of “receiving, from a second user, at least one sell request associated with the at least one entry of the first set of entries,” as recited in Claim 2. To the extent that the wager of the user is analogous to Applicants’ “buy request” (which Applicants do not admit), there is no disclosure in *Stronach* of a “sell request” from a “second user.” Further, to the extent that *Stronach* discloses any “matching,” the matching is limited to matching the handicapping data related to a participant in a race with the current odds. Accordingly, *Stronach* also does not disclose, teach, or suggest “matching the at least one buy request with the at least one sell request” and “transferring the at least one entry of the first set of entries from the second user to the first user,” as recited in Applicants’ Claim 2.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 2.

II. Section 103 Rejections

A. Claim 3

The Examiner rejects Claim 3 under 35 U.S.C. § 102(a) as being anticipated by *Stronach* in view of U.S. Patent No. 6,067,532 issued to Gebb (“*Gebb*”). Applicants respectfully request reconsideration of Claim 3 for the reasons discussed below.

Claim 3 has been rewritten in independent form to include the limitations recited in Claim 1 prior to any amendment in this Response to Office Action. Applicants respectfully submit that the proposed *Stronach-Gebb* combination does not disclose, teach, or suggest the combination of claim elements recited in Applicants’ Claim 3, as previously presented. For example, Applicants respectfully submit that the proposed *Stronach-Gebb* combination does not disclose, teach, or suggest at least the following claim elements recited in Claim 3:

receiving, from a second user, a short order sale order associated with the at least one entry of the first set of entries;
matching buy order with the at least one short sale order to create a short sale;
settling, at a predetermined time, the short sale.

In the *Office Action*, the Examiner acknowledges that *Stronach* fails to disclose the recited claim elements. Instead, the *Office Action* identifies *Gebb* as disclosing the “shorter order sale order” and the operational steps recited above. As teaching these claimed aspects, the *Office Action* relies on *Gebb*, column 6, line 40 through column 7, line 13. (*Office Action*, pages 3-4). In general, *Gebb* discloses “an automated system for posting event tickets for sale, allowing purchase of the tickets . . . and distributing new tickets to the new owner.” (*Gebb*, column 1, lines 5-9). The system “includes a method for accepting tickets from individual sellers, posting the tickets on a central database for redistribution, establishing a market price based on demand and/or a service fee . . . and redistributing the tickets to new buyers.” (*Gebb*, column 2, lines 13-19).

The portion of *Gebb* that is specifically cited by the Examiner merely discloses that “[a]fter enrolling in the ticket redistribution system . . . the seller is authorized to consign an event ticket to host system 30 for sale and distribution to the interested buyer.” (*Gebb*, column 6, lines 41-44). As disclosed in *Gebb*, the owner of the ticket sends information about the tickets for sale to the ticket server 60. (*Gebb*, column 6, lines 51-63). Alternatively, “an owner of season tickets, in lieu of receiving some or all of the paper tickets, posts some or all of the tickets on host system 30, thereby allowing the season ticket holder to determine if he/she wants to go to an event before the tickets are originally printed.” (*Gebb*, column 6, line 64 through column 7, line 1). While the “ticket holder would then have the option of attending specific events or exchanging tickets if unable to attend or decide to attend the event based on other offers for the tickets” (*Gebb*, column 7, lines 1-12), *Gebb* clearly identifies the ticket holder as “the owner” of the tickets. There is no disclosure in *Gebb* that tickets may be sold before they are owned. Thus, there is no disclosure in *Gebb* of “receiving, from a second user, a short order sale order associated with the at least one entry of the first set of entries,” “matching buy order with the at least one short sale order to create a short sale,” and “settling, at a predetermined time, the short sale,” as recited in

Claim 3. In fact, *Gebb*'s disclosure fails to even include any the terms "short," "short sale," "short order," or any other terminology that would indicate a short sale.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 3.

B. Claims 4-47

The Examiner rejects Claims 4-47 under 35 U.S.C. § 103(a) as being unpatentable over *Stronach* in view of *Gebb* and U.S. Patent Application Publication No. 2002/0082969 issued to O'Keeffe et al. ("*O'Keeffe*"). Applicants respectfully submit that the combination of references does not disclose, teach, or suggest each and every feature of Applicants' claims.

Dependent Claims 4-47 depend on Claim 1. Accordingly, dependent Claims 4-47 are not obvious over the proposed *Stronach-Gebb-O'Keeffe* combination at least because Claims 4-47 include the limitations of independent Claim 1, which Applicants have shown above to be allowable. Since Claims 4-47 incorporate the limitations of their respective independent claims, Applicants have not provided detailed arguments with respect to Claims 4-47. However, Applicants remain ready to do so if it becomes appropriate.

No Waiver

Additionally, Applicants have merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner's rejections.

CONCLUSION

Applicants respectfully submit that the present Application is in condition for allowance and favorable notice thereof is solicited. Applicants respectfully request allowance of Claims 1-47.

No fees are believed to be due; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call their attorney at the number listed below.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants

A handwritten signature in black ink, appearing to read "Jenni R. Moen", is written over the typed name and contact information.

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